THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2003-0673, In the Matter of Rosemarie E. Hillebrand and Thomas A. Hillebrand, the court on December 14, 2004, issued the following order:

The petitioner, Rosemarie E. Hillebrand, and the respondent, Thomas A. Hillebrand, have filed cross-appeals from an order of the superior court denying their petitions to modify alimony. Cf. Hillebrand v. Hillebrand, 130 N.H. 520 (1988). We affirm.

Absent an unsustainable exercise of discretion, we will affirm an order of the trial court concerning the modification of alimony. See Laflamme v. Laflamme, 144 N.H. 524, 527 (1999); State v. Lambert, 147 N.H. 295, 296 (2001)(explaining unsustainable exercise of discretion standard). "To obtain an order modifying a support obligation, a party must show that a substantial change in circumstances has arisen since the initial award, making the current support amount either improper or unfair." Laflamme v. Laflamme, 144 N.H. at 527. "Changes to a party's condition that are both anticipated and foreseeable at the time of the decree cannot rise to the level of a substantial change in circumstances sufficient to warrant modification of an alimony award." Id. at 528-29.

The parties were divorced in 1986; the respondent was ordered to pay the petitioner $3100 per month as alimony payable until her death or remarriage. To the extent that the respondent contests the legality of the term of the alimony awarded in 1986, his claim is barred by res judicata. See Eastern Marine Const. Corp. v. First Southern Leasing, 129 N.H. 270, 273-77 (1987); Hillebrand v. Hillebrand, 130 N.H. 520. The trial court may, however, modify the award of alimony under the circumstances set forth in Laflamme.

The respondent argues that because the petitioner has obtained an associate's degree and is now employed, she can be self-supporting at a standard of living that meets her reasonable needs. The applicable standard for modification of alimony includes as a factor the style of living to which the parties were accustomed during their marriage. See RSA 458:19 (Supp. 2004). At the time of the parties' divorce, the respondent was a successful oral surgeon earning approximately $200,000, see Hillebrand, 130 N.H. at 526; that the petitioner was earning $26,000 at the time of the modification hearing was therefore an appropriate factor to be considered in determining whether to grant the respondent's request for modification. More importantly, these factors do not rise to the level of a substantial change in circumstances sufficient to warrant modification of an alimony award. For the same reasons, we conclude that the trial court correctly denied the petitioner's request for an increase in alimony, in

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which she cited inflation and the large increase in the respondent's income as support for her request.

The respondent also contends that the trial court failed to adequately consider his prospective divorce and potential child support obligation in reviewing his request for modification. We have previously held that while remarriage and consequential duties of support are factors that must be considered in evaluating a request for modification, they are not dispositive of the issue. See In the Matter of Rohdenburg & Rohdenburg, 149 N.H. 276, 280 (2003). It is clear from the trial court's order that the court considered these factors and found that they did not require modification. We have reviewed the record and conclude that the trial court's exercise of discretion was sustainable.

The respondent also argues that the trial court erred in failing to rule on his requests for findings of fact and rulings of law. The appellate record does not contain this pleading. Although the respondent requested that several exhibits be transferred, this was not included in his request. As an appealing party, the respondent has the burden to provide this court with a record sufficient to decide his issues on appeal. See Rix v. Kinderworks Corp., 136 N.H. 548, 553 (1992); see also Sup. Ct. R. 13 (2).

Finally, the respondent argues that the trial court erred in ordering that he pay $1000 to petitioner's counsel as a contempt sanction. He does not contest the propriety of the sanction but only whether the court could order it paid to petitioner's counsel. Having reviewed the record, we conclude that this issue has not been preserved.

Affirmed.

BRODERICK, C.J., and DALIANIS and GALWAY, JJ., concurred.

Eileen Fox,
Clerk

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